

## ARTICLE 22 NONCONFORMING USES, LOTS AND STRUCTURES

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### **Section 22.05 Purpose.**

The purpose of this Article is to permit legal nonconforming lots, structures, or uses to continue until they are removed or abandoned, but not to encourage their permanent existence. It is recognized that in certain circumstances it is appropriate to authorize resumption, restoration, reconstruction, extension, or substitution of nonconforming uses.

### **Section 22.10 Declaration and Regulation.**

Any lot or lawful use of land or a structure existing on the effective date of this Ordinance, or on the effective date of any future amendments which may be made to this Ordinance, and located in a zoning district in which it would not be permitted, or prohibited, regulated, restricted, or otherwise unlawful as a new use or otherwise under the regulations of this Ordinance, is declared to be a nonconforming lot, use, or structure and not in violation of this Ordinance. However, a nonconforming use shall be subject to, and the owner shall comply with, the regulations of this Ordinance.

It is the intent of this Article to permit these nonconformities to continue until they are removed or abandoned, but not to encourage their survival. Such nonconforming uses and structures are declared by this Article to be incompatible with the permitted uses in the zoning districts involved. It is further the intent of this Article that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.

Nonconforming uses are considered to present a greater public burden than nonconforming lots and structures, therefore the intent of this ordinance is to gradually eliminate nonconforming uses. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged by attachment on a building or premises of additional signs intended to be seen from the premises or by the addition of other uses of a nature which would be prohibited generally in the zoning district involved.

To avoid undue hardship, nothing in this Article shall be deemed to require a change in the plans, construction, or designated use of any structure on which actual construction was lawfully begun prior to the effective date or amendment of this Article, and upon which actual building construction has been diligently carried on.

#### **Section 22.15 Nonconforming Uses of Land.**

Where, on the effective date of this Ordinance or of any future amendments made to this Ordinance, a lawful use of land exists, which uses would not be permitted or prohibited, regulated, restricted, otherwise unlawful by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful provided:

- A. No such nonconforming use shall be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date of this Ordinance, or amendments thereof.

- B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that portion occupied by such use on the effective date of this Ordinance, or amendments thereof.
- C. If any such nonconforming use of land ceases for any reason for a period of more than forty (40) days, such land shall conform to the regulations specified by this Ordinance for the zoning district in which such land is located.
- D. Those alleged nonconforming uses which cannot be proved to have been legally existing prior to the effective date of this Ordinance, or amendment thereof, shall be declared illegal nonconforming uses and shall be discontinued following such effective date.
- E. No additional structure not conforming to this Ordinance shall be erected in connection with such nonconforming use of land.

**Section 22.20 Nonconforming Use of Structures.**

If a lawful use involving an individual structure or a structure and premises in combination, exists on the effective date of this Ordinance or amendment thereof, which use would not be allowed in the zoning district in which it is located under this Ordinance, the lawful use may be continued so long as it remains otherwise, lawful subject to the following:

- A. No existing structure devoted to a use not permitted by this Ordinance in the zoning district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located.
- B. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged, designed, or designated for such use at the time of adoption of this Ordinance or amendment thereof, but no such use shall be extended to occupy any land outside such building.

- C. If no structural alterations are made, any nonconforming use of a structure or structure and premises, may be changed to another nonconforming use, provided the Planning Commission determines that the proposed use is equally appropriate or more appropriate to the zoning district than the existing nonconforming use. Whenever a nonconforming use has been changed to a conforming use or to a use permitted in a zoning district of greater restrictions, it shall not thereafter be changed to a nonconforming use.
- D. Any structure or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed.
- E. When a nonconforming use of a structure or structure and premises in combination, is discontinued or ceases for one (1) year or for a total of eighteen (18) months during any three (3) year period, the structure or structure and premises in combination, shall not thereafter be used, except in conformance with the regulations of the zoning district in which it is located. Structures occupied by seasonal uses shall be excepted from this paragraph.
- F. Where a nonconforming use status applies to a structure and premises in combination, the removal or destruction of the entire structure, shall eliminate the nonconforming status of the land.

**Section 22.25 Nonconforming Structures.**

Where a lawful structure exists on the effective date of this Ordinance or amendment thereof, which structure could not be built under this Ordinance by reasons of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following:

- A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity but any structure or portion thereof may be altered to decrease its nonconformity. Should such structure be altered or modified so as to eliminate, remove, or

lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later reestablished or increased.

- B. If such structure is moved for any reason whatever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.
- C. If any such nonconforming structure ceases being used for any reason for a period of more than one (1) year, any subsequent use of such district shall conform to the regulations specified in this Ordinance for the zoning district in which such structure is located.
- D. Should such structure be destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at the time of the destruction. It shall not be reconstructed except in conformity with the provisions of this Article.
- E. A residential nonconforming structure may be allowed to expand provided the expansion does not increase the size of the established footprint or the expansion is within a yard which retains compliance with the required setback and height (e.g., a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming). Provided further that the following are met for the subject structure:
  - 1. The cost of such work shall not exceed fifty (50%) of the market value of such residential structure prior to the time such work is started.
  - 2. The only nonconforming situation on the parcel shall be dimensional ones related to the house and/or garage.
  - 3. Any other expansion shall be prohibited unless a variance is granted by the Zoning Board of Appeals.

### **Section 22.30 Nonconforming Lots of Record.**

- A. In any district in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Zoning Ordinance, a single family dwelling and

customary accessory buildings may be erected on any single family lot of record on the effective date of this Ordinance, provided such lot is located in a block on which fifty-one percent (51%) or more of the lots on both sides of the street are occupied by single family dwellings. Where fifty-one percent (51%) or more of the existing homes are built upon a larger lot or combination of lots, a building permit will not be granted for a lot of less area or width than the size of the lots of the majority of the dwellings existing on the effective date of this Ordinance.

- B. In those areas where less than fifty-one percent (51%) of the lots are built upon in a one (1) block area, the provisions regarding the use of the combined lots shall apply.
- C. Permission to use a single nonconforming lot as provided in this section shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the zoning district. However, yard dimensions and other requirements not involving lot area or lot width, or both, shall conform to the regulations for the district in which the lot is located.
- D. Any lot, or combination of lots and portions of lots, with continuous frontage in single ownership, are of record on the effective date of this Ordinance, and if total area of these land(s) does not meet the requirements for lot width and lot area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance. No portion of such a parcel shall be used or occupied, which portion does not meet lot width and lot area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot width or area below the requirements stated in this Ordinance.

**Section 22.35 Restoration and Repair.**

- A. On any nonconforming structure or on any portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding twenty-five percent (25%) of the current state equalized valuation of the

nonconforming structure or portion thereof, as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

- B If a nonconforming structure or a portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by the Village to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

#### **Section 22.40 Restoration of Damaged Buildings.**

Nothing in this Ordinance shall prevent the reconstruction, repair, restoration, and continued use of any nonconforming building or structure damaged by fire, collapse, explosion, acts of God, or acts of public enemy, subsequent to the effective date of this Ordinance, wherein the expense of such reconstruction does not exceed thirty-percent (30%) of the State equalized valuation of the entire building or structure at the time such damage occurred, provided that all of the following apply:

- A. Such valuation shall be subject to the approval of the Planning Commission.
- B. Such restoration and resumption shall take place within six (6) months of the time of such damage and it shall be completed within one (1) year from the time of such damage.
- C. Such use shall be identical to the nonconforming use permitted and in effect directly preceding such damage.

Where pending insurance claims require an extension of time, the Planning Commission may grant a time extension, provided that the property owner submits a certification from the insurance company attesting to the delay. Until such time as the debris from the damage is removed, the premises shall be adequately fenced or screened from access by children who may be attracted to the premises.

### **Section 22.45 Change of Nonconforming Use.**

Whenever a zoning district shall be changed, any existing nonconforming use in such changed zoning district may be continued, provided all other regulations and ordinances governing the use are met.

### **Section 22.50 Nonconforming Use Discontinued.**

In the event any nonconforming use is discontinued for a period of one (1) year, it shall be presumed that the owner thereof intends to abandon the right to continue or resume the same and any subsequent use. The use shall conform to the uses permitted in the zoning district in which the premises are located.

The owner of the property upon which the nonconforming use is located shall be entitled to submit proof of intent to the Planning Commission to continue the use to rebut the presumption of abandonment; however, the burden of such proof shall rest upon the property owner. If the Planning Commission determines that the owner did not intend to abandon the right of continuation of the nonconforming use, the owner shall be entitled to resume the use previously made.

### **Section 22.55 Continuation of Uses.**

When a nonconforming use of property is discontinued through vacancy, lack of operation or other similar conditions for a period of one (1) year or more, thereafter no right shall exist to maintain on such property a nonconforming use unless the Zoning Board of Appeals grants such privilege within six (6) months after such discontinuance. No nonconforming use, if changed to a use permitted in the zoning district in which it is located, shall be resumed or changed back to a nonconforming use.

### **Section 22.60 Extensions; Enlargements; Moving.**

No nonconforming use of any land or structure shall hereafter be enlarged or extended. No nonconforming building or structure shall be moved in whole or in part to another location unless such building or structure and the off-street parking spaces, yards, and other open spaces provided are made to conform to all the regulations of the zoning district in which the building or structure is to be located.



**Section 22.65 Change of Tenancy or Ownership.**

There may be a change in tenancy, ownership, or management of an existing nonconforming use, provided there is no change in the nature or character of such nonconforming use.

**Section 22.70 Certificates of Occupancy; Records.**

- A. If at any time after the effective date of this Ordinance, the Village becomes aware of a nonconforming use, the owner of such nonconforming use shall be notified by the Zoning Official of the provisions of this Article and that his or her property constitutes a nonconforming use. Within thirty (30) days after receipt of such notice, the owner shall apply for and be issued a certificate of occupancy by the Village for the nonconforming use. The application for such certificate shall designate the location, nature, and extent of the nonconforming use and such other details as may be necessary for the issuance of the certificate of occupancy.
- B. If the owner of a nonconforming use fails to apply for a certificate of occupancy within thirty (30) days after receipt of such notice, the use ceases to be nonconforming and is declared to be in violation of this Ordinance. The Village may then take enforcement action as appropriate.
- C. If the Village finds, upon reviewing the application for a certificate of occupancy, that the existing use is illegal or in violation of any other ordinance or law, or if he or she finds that the building for which the certificate is requested has been constructed or altered for the existing use or any other use without full compliance with the Village Building Code or the Zoning Ordinance in effect at the time of construction or alteration, he or she shall not issue the certificate of occupancy, but shall declare such a use to be in violation of this Ordinance.

**Section 22.75 Application to Previously Filed Plans.**

In any case where plans and specifications for a building or structure have been filed, which building or structure would conform with the zoning regulations in effect on the date of such filing, but not

with the regulations of this Ordinance, and where a building permit for such a building or structure has been issued and construction work started on the effective date of this Ordinance, such work may proceed, provided it is completed within one (1) year of such date.